89-1709

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No.

IN THE
SUPREME COURT of THE UNITED STATES
OCTOBER TERM, 1989

LLOYD W. PATTERSON,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

James B. Lewis
Director
Student Tax Clinic
Benjamin N. Cardozo
School of Law
Yeshiva University
55 Fifth Avenue
New York, New York 10003
(212) 790-0381

Counsel for Petitioner

QUESTION PRESENTED

Whether petitioner's right to free exercise of his religion guaranteed by the First Amendment to the United States Constitution is infringed by his income tax classification as a married individual filing a separate return.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

LLOYD W. PATTERSON,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The memorandum opinion of the United States Tax Court (Tannenwald, J.) was filed on April 27, 1989, and designated T.C. Memo. 1989-193. That opinion and the decision of the Tax Court, entered on July 21, 1989, are reprinted in Appendix A to this petition.

The summary order of the United States Court of Appeals for the Second Circuit (Van Graafeiland, Miner, and Walker, *Circuit Judges*), affirming the Tax Court, was filed on January 24, 1990, and was issued as a mandate on March 29, 1990. That order, which will not be officially reported, is reprinted in Appendix B to this petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered on January 24, 1990. Jurisdiction is conferred on this Court by 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The statutes involved are sections 1(c) and (d) and 143 of the Internal Revenue Code of 1954, as amended (the "Code"). Those statutes are reprinted in Appendix C to this petition.

STATEMENT OF THE CASE

The courts below sustained the Commissioner of Internal Revenue's determination of petitioner's 1982 income tax liability as a married individual filing a separate return. The disputed issue is whether that determination infringes petitioner's right to the free exercise of his religion guaranteed by the First Amendment to the United States Constitution. Petitioner contends that, because his religious beliefs do not permit him to obtain a decree of divorce or legal separation from his wife, the free exercise clause requires that his tax liability be determined at the more favorable rates applicable to an unmarried individual.

Petitioner and his wife were married in Guyana (then British Guiana) in 1955 under the auspices of the Anglican Church of that country. Their six children were born in Guyana between 1956 and 1962. The family moved to Brooklyn in 1967, and lived together until 1979. Petitioner and his wife are both wage earners.

In 1979 petitioner and his family were planning to move to a house in a better neighborhood in Brooklyn, which petitioner had purchased and was renovating. Shortly before the scheduled moving day, petitioner and his wife had a disagreement over his refusal to permit their younger children to attend evening social events. As a result, petitioner's wife refused to accompany petitioner when he moved, which he had to do to protect his investment in the new residence. The de-

pendent children have continued to live with the wife, but petitioner has continued to contribute to their support and to the cost of maintaining the residence in which the wife and children live.

In reliance on then applicable section 143(b) of the Code, and sections 1.2–2(e) and 1.143–1(b) of the income tax regulations, petitioner's wife filed for 1982 a separate return as a head of household, as defined in section 2(b) of the Code, and claimed exemptions for the dependent children living with her. The Commissioner of Internal Revenue accepted that return as filed.

Petitioner's 1982 tax liability is $7,198 as a married person filing separately and $5,837 ($1,361 less) as an unmarried individual. The issue is an annually recurring one for petitioner. The issue also affects other similarly situated taxpayers.

The Anglican Church of Guyana denies communion to divorced individuals. Petitioner's adherence to that faith and his individually held religious beliefs prevent him from obtaining a decree of divorce or legal separation from his wife.

By order of the Tax Court (reproduced in Appendix A), this case was submitted for decision without trial under the assumption that petitioner's religious belief prevented him from obtaining a decree of divorce or legal separation from his wife. Because there was no trial, the facts summarized above are not fully reflected in the record. Petitioner was prepared below (and is prepared if this Court remands the case) to establish those facts.

REASONS FOR GRANTING THE WRIT

Petitioner is annually subjected to a substantial penalty ($1,361 for 1982) because he is bound by the biblical command "What therefore God hath joined together, let not man put asunder." He asks this Court to consider whether that penalty violates his constitutional right to the free exercise of his religion.

Petitioner should prevail if this Court finds that the government has placed a burden on his adherence to his religious belief and, if so,

that the burden is not justified by a compelling governmental interest. This Court has applied that twofold test in a series of freedom of religion cases dating back to and beyond 1963. [1/]

Sherbert and subsequent decisions of this Court have protected against governmental penalty the First Amendment rights of individuals whose religious beliefs prohibited Saturday work, [2/] Sunday work, [3/] work in munitions plants, [4/] compulsory secondary school attendance, [5/] photography for a driver's license, [6/] or use of an automobile license plate with the motto "Live Free or Die." [7/]

The Court of Appeals in its decision below, without citing any of the above cases, erroneously relied on three other cases in which this Court subordinated the free exercise right to the competing governmental interest. [8/]

This petition gives this Court its first good opportunity to protect the free exercise right from federal income tax intrusion. The adversarial interests involved are both formidable. On the one hand, the

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1/ *E.g., Sherbert* v. *Verner*, 374 U.S. 398, 403, 406 (1963), and other cases cited *infra* notes 2-8.

2/ *Hobbie* v. *Unemployment Appeals Commission of Florida*, 480 U.S. 136 (1987); *Sherbert* v. *Verner*, *supra* note 1.

3/ *Frazee* v. *Illinois Dept. of Employment Sec.*, 109 S. Ct. 1514 (1989).

4/ *Thomas* v. *Review Bd., Ind. Empl. Sec. Div.*, 450 U.S. 707 (1981).

5/ *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972).

6/ *Jensen* v. *Quaring*, 472 U.S. 478 (1985)[a four-to-four *per curiam* affirmance without opinion].

7/ *Wooley* v. *Maynard*, 430 U.S. 705 (1977).

8/ *United States* v. *Lee*, 455 U.S. 252 (1982); *Hernandez* v. *Commissioner*, 109 S.Ct. 2136 (1989); *Jimmy Swaggart Ministries* v. *Board of Equalization of California*, 58 L.W 4135 (1/17/90).

First Amendment protects, in this Court's words, "our most precious freedoms." 9/ On the other hand, again in this Court's words, "the broad public interest in maintaining a sound tax system is of . . a high order." 10/

We address consecutively below the two elements of the *Sherbert* formula.

I. The Burden on Petitioner's Adherence to His Religious Belief

In four of the above-cited cases the penalty invalidated by this Court was a monetary one—denial of unemployment compensation. 11/ This Court has thus treated monetary penalties as no less vulnerable than criminal sanctions to First Amendment challenge. Higher income tax is no less a monetary penalty than denial of unemployment compensation. The parties in both situations are government and individual. That taxes flow to, and unemployment benefits from, the government is irrelevant. Indeed, tax refunds, like unemployment benefits, flow from the government.

This Court observed in *Sherbert* that it was not only "apparent that appellant's declared ineligibility for [unemployment] benefits derives solely from the practice of her religion," but also that "the pressure upon her to forego that practice is unmistakable." 374 U.S. at 404. Ms. Sherbert was forced "to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand." *Id.* "Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship." *Id.*

9/ *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 438 (1963).

10/ *United States* v. *Lee*, *supra* note 8, at 260.

11/ Sherbert, *supra* note 1; Hobbie, *supra* note 2; Frazee, *supra* note 3; Thomas *supra* note 4.

The *Sherbert* reasoning fits this case. Petitioner was forced to choose between following the precepts of his religion (by remaining married) and forfeiting tax savings, on the one hand, or abandoning the precepts of his religion (by divorcing his wife) to obtain the tax savings, on the other.

An annual monetary burden of more than $1,300 is a substantial one to a middle-level wage earner burdened with financial responsibilities for two households. The court below erred in describing that burden (App., p. 15a) as "incidental" or "insignificant."

Unlike the challengers to taxation in *Lee* and *Swaggart*, petitioner does not ask to be exempted from a generally-applicable flat-rate tax. He seeks instead to be taxed at the rates available to comparable taxpayers who are not bound by his religious beliefs. His wife, accepting the benefits of Code section 143(b), is treated as unmarried, so that the joint return filing alternative (used by about 99 percent of married couples) is, as a practical matter, unavailable to petitioner. Petitioner is left with Hobson's choice.

The Court of Appeals missed the point in observing below (App., p. 15a) that the tax law does not require petitioner to violate his religious beliefs. The point is that the tax law penalizes him for observing those beliefs.

The penalty imposed on petitioner is not only substantial; it is direct and discriminatory. Petitioner's argument is not simply that he has less money (the argument rejected by this Court in *Hernandez*, 109 S. Ct. at 2148–49), but that he is taxed more severely because of his religious beliefs.

II. The Absence of a Sufficiently Compelling Governmental Interest

Tax statutes are not invulnerable to First Amendment attack.

This Court held in *Sherbert* that "[g]overnment may . . . [not] employ the taxing power to inhibit the dissemination of particular relig-

ious views, *Murdock* v. *Pennsylvania*, 319 U.S. 105 [1943]; *Follett* v. *McCormick*, 321 U.S. 573 [1944]; *cf. Grosjean* v. *American Press Co.*, 297 U.S. 233 [1936]." 374 U.S at 402.

The appellants in *Murdock* and *Follett* were Jehovah's Witnesses who successfully challenged municipal license taxes imposed on their sales of religious books and tracts. In *Murdock* this Court, noting the religious nature of appellants' activities, held that "[o]n their face . . . [the license taxes] are a restriction of the free exercise of those freedoms which are protected by the First Amendment." 319 U.S. at 114. Equality in treatment of commercial and religious materials did not save the taxing ordinance. "[F]reedom of religion . . . [is] in a preferred position." Id. at 115.

This Court reaffirmed its *Murdock* holding in *Follett*. Distributors of religious books, said this Court, could not "be required to pay a tax for the exercise of that which the First Amendment has made a high constitutional privilege." 321 U.S. at 578.

To the same effect was this Court's *Grosjean* opinion cited in *Sherbert*. *Grosjean* invalidated a state license tax on newspapers on the ground that the tax abridged the freedom of speech or of the press. "The tax here involved . . . is bad because . . . it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties." 297 U.S. at 250.

In *Speiser* v. *Randall*, 357 U.S. 513 (1958), this Court held that a state could not constitutionally deny a property tax exemption to individuals who engage in certain forms of speech. "[A] discriminatory denial of a tax exemption for engaging in free speech is a limitation on free speech." 357 U.S. at 518.

The foregoing analysis shows that this Court's statement in *Lee* (433 U.S. at 260) that "religious belief in conflict with the payment of taxes affords no basis for resisting the tax" is not a principle of unlimited application. As in First Amendment cases generally, the constitu-

tionally protected right must be weighed against the governmental interest. In *Lee* this Court found the governmental interest to be paramount because mandatory coverage is essential to the soundness of the social security system. 455 U.S. at 258–59.

Classification of petitioner as an unmarried taxpayer would pose no comparable threat to the tax system. Because "[c]ourts are not arbiters of scriptural interpretation," 12/ this Court, and therefore the Commissioner, should accept petitioner's contention that divorce is forbidden by his religious faith. Computation of tax liability is no more difficult for unmarried status than for the status of married filing separately. If the reclassification sought by petitioner is required by the First Amendment, it should not be denied on grounds of administrative convenience.

The Court of Appeals has erred in deciding (App., p. 15a) that the government's interest here outweighs petitioner's free exercise right.

III. The Impact of *Employment Div., Dept. of Human Resources* v. *Smith*, 1990 WL 42783 (4/17/90)

Three days before the date of this petition, in the above-cited case ("*Smith II*"), this Court refused to apply the *Sherbert* balancing test to conduct prohibited under an across-the-board criminal law. This Court said in *Smith II* that it "would not apply . . . [the *Sherbert* balancing test] to require exemptions from a generally applicable criminal law." If that is the *Smith II* holding, this case is classifiable with *Sherbert* (civil conduct) rather than with *Smith II* (criminal conduct).

In arriving at its *Smith II* result, however, this Court said it had protected the free exercise right under the *Sherbert* balancing test (1)

12/ *Lee*, 455 U.S. at 257, quoting from *Thomas*, 450 U.S. at 716.

on only three occasions (*Sherbert*, *Thomas*, and *Hobbie*), (2) in unemployment compensation denial situations only (and none of them in recent years), and (3) only in situations involving "individualized governmental assessment of the reasons for the relevant conduct." We note, however, the following:

1. This Court again applied the *Sherbert* balancing test to invalidate denial of unemployment compensation in *Frazee*, a recent unanimous opinion (entered on March 29, 1989).

2. This Court applied that test in *Wisconsin* v. *Yoder* to invalidate a compulsory school attendance statute and in *Wooley* v. *Maynard* to invalidate a statute prohibiting obscuring of an automobile license plate motto. Those two cases both involved criminal statutes, and neither of them involved "individualized governmental assessment" of the reasons for the conduct protected by this Court.

3. In the above respects and in others, the reasoning of the majority opinion in *Smith II* goes far beyond the holding itself. Nothing in this Court's prior free exercise opinions suggests, as does the *Smith II* opinion, that the free exercise right must be coupled with another constitutional right to prevail over governmental regulation.

4. The *Smith II* suggestion that a generally applicable statute is immune from free exercise attack is also at odds with this Court's prior holdings. "A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." *Yoder*, 406 U.S. at 220 (citations omitted); *Thomas*, 450 U.S. at 717 (citations omitted). The Wisconsin statute in *Yoder* was not saved by the fact that it "applie[d] uniformly to all citizens of the State and . . . [did] not, on its face, discriminate against religions or a particular religion . . . " 406 U.S. at 220.

There is serious doubt, therefore, as to what limits *Smith II* has placed on the *Sherbert* balancing test, particularly outside the criminal law area.

The uncertainties flowing from the impact of *Smith II* on *Sherbert* require this Court's further attention. That need makes this petition a timely one.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

James B. Lewis
Director, Student Tax Clinic
Benjamin N. Cardozo School of Law
Yeshiva University
55 Fifth Avenue
New York, NY 10003
Tel. No. (212) 790–0381

Counsel for Petitioner

Dated: April 20, 1990

APPENDICES

TABLE OF CONTENTS

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

LLOYD W. PATTERSON,

Petitioner

v. Docket No. 8798–86

COMMISSIONER OF INTERNAL REVENUE,

Respondent

ORDER

The Court having conferred with counsel for the parties and having been informed that the parties have resolved the income averaging and crediting of 1977 overpayment issues and that the only remaining issue is the marital status of the petitioner, it is

ORDERED: That this case is stricken from the calendar for the Special Session of the Court in New York, New York, commencing on November 16, 1988. It is further

ORDERED: That on or before January 13, 1989, petitioner shall file a brief with the Court in which he shall show cause why the marital status issue should not be resolved against the petitioner either by virtue of the interpretation of section 143(b) of the Internal Revenue Code in effect during the 1982 taxable year or by virtue of *Kelly* v. *Terry*, 629 F.2d 572 (9th Cir. 1980), *Black* v. *Commissioner*, 69 T.C. 505, 510 (1977), and such other authorities as may be on point in respect of the effect of the First Amendment to the Constitution, assuming, solely for the purpose of this order, that petitioner's religious beliefs ruled out his capacity to become legally separated from his wife during 1982 under a decree of divorce or of separate maintenance. It is further

ORDERED: That on or before March 10, 1989, respondent shall file with the Court his answering brief. It is further

ORDERED: That each party shall serve his brief on the other party simultaneously with its filing with the Court. It is further

ORDERED: That, unless otherwise permitted by the Court, no further briefs shall be filed.

s/
Theodore Tannenwald, Jr.
Judge

Dated: Washington, D.C.
November 15, 1988

T. C. Memo. 1989-193

UNITED STATES TAX COURT

LLOYD W. PATTERSON, Petitioner v. *COMMISSIONER OF INTERNAL REVENUE, Respondent*

Docket No. 8798-86. Filed April 27, 1989.

James B. Lewis, for the petitioner.

Diane R. Mirabito, for the respondent.

MEMORANDUM OPINION

TANNENWALD, *Judge*: Respondent determined the following deficiency in, and additions to, petitioner's Federal income tax for the taxable year 1982:

	Additions to Tax			
Deficiency	Sec. 6651 [1/]	Sec. 6653(a)(1)	Sec. 6653(a)(2)	Sec. 6654
$12,638.00	$1,718.00	$631.00	$1,394.00	$529.00

After concessions, the sole issue for decision is whether petitioner's tax should be calculated under section 1(c) at the rates applicable to unmarried individuals or under section 1(d) at the rates applicable to married individuals filing separately.

All of the facts have been stipulated and are so found. The stipulation of facts and attached exhibits are incorporated herein by this reference.

Petitioner resided in Brooklyn, New York, when he filed his petition. In 1955, petitioner married Irmin Roach in British Guiana under the auspices of the Anglican Church of Guyana. As of the close of the

1/ All section references are to the Internal Revenue Code of 1954, as amended and in effect during the year in issue.

taxable year 1982, petitioner was not legally separated from his wife under a decree of divorce or of separate maintenance. Petitioner failed to file a Federal income tax return for taxable year 1982. In his notice of deficiency, respondent computed petitioner's 1982 tax liability under section 1(d) as married filing separately.

The determination of whether an individual is married, for purposes of determining his tax status and the applicable tax rates under section 1, is made as of the close of his taxable year. Sec. 143(a)(1). [2/] At that time, an individual who is not legally separated from his spouse under a decree of divorce or of separate maintenance is considered married, even though living apart from his spouse. Sec. 143(a)(2); sec. 1.143-1(a), Income Tax Regs.; *Donigan* v. *Commissioner*, 68 T.C. 632 (1977).

Petitioner's main contention is that sections 1 and 143 unconstitutionally infringe upon his right of free exercise of his religion by requiring him to calculate his tax at the rates applicable to married individuals filing separately when his religious beliefs prohibit him from divorcing or legally separating from his wife (a fact which we assume is true for purposes of our decision herein). Petitioner argues that he is faced with a Hobson's choice between exercising his religious beliefs by not divorcing or legally separating from his wife and paying higher taxes on the one hand and abandoning his religious beliefs and paying lower taxes on the other. [3/] Alternatively, petitioner suggests that section 143(b) can be interpreted as classifying him as unmarried so that he would thereby become entitled to use the rates applicable to unmarried individuals under section 1(c). [4/]

2/ Sec. 143 has been redesignated sec. 7703 by the Tax Reform Act of 1986, Pub. L. 99-514, 100 Stat. 2085.

3/ Although the details of the calculation are not revealed by the record, it appears that petitioner's tax for 1982 will be lower if the rates for unmarried individuals under section 1(c) rather than the rates for married individuals filing separately under section 1(d) apply.

4/ Petitioner makes no attempt to pursue, on brief, the discrimination argument presented in his amended petition, and we therefore consider it abandoned. We note

(continued)

We deal first with petitioner's alternative contention. In support of his position, petitioner argues that, because his wife was considered unmarried under the provisions of section 143(b), it follows that petitioner must also be considered unmarried. While we recognize the principle that a statute should be interpreted, if possible, to avoid invalidation on constitutional grounds, we think this principle simply does not apply to the instant case. It does not necessarily follow (no matter how logically petitioner thinks it should) that, because petitioner's wife might be entitled to claim unmarried status under section 143(b), petitioner should be considered unmarried. 5/ Moreover, the record is utterly devoid of evidence necessary to support the conclusion that petitioner's wife was, in fact, so entitled. In view of the foregoing, we turn our attention to petitioner's constitutional argument.

Petitioner has favored us with a detailed and scholarly analysis of the constitutional considerations he believes are involved. We do not disagree with the principle which petitioner submits as applicable in determining the impact of the "free exercise of religion" clause of the First Amendment to the Constitution, namely, "that the free exercise right prevails over government regulation unless the purpose served by the government regulation can fairly be characterized as compelling." We simply do not think the application of this principle requires the result which petitioner seeks herein.

Initially, we think it important to recognize that the government has a sufficiently substantial interest in maintaining a sound and administratively workable tax system to justify an incidental burden on an individual's free exercise of religion. *United States* v. *Lee*, 455 U.S.

Adhering to our opinion in *Black* v. *Commissioner*, 69 T.C. 505, 510–511 (1977), 6/ we hold that, in this case, the sections at issue have

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that, in any event, such a position would have been resolved against petitioner. *Druker* v. *Commissioner*, 77 T.C. 867 (1981), *affd.* on this issue 697 F.2d 46 (2d Cir. 1982); *Black* v. *Commissioner*, 69 T.C. 505 (1977).

5/ The parties have stipulated that petitioner does not meet all the conditions set forth in section 143(b).

6/ We find it unnecessary to answer each detail of petitioner's attack on our opinion in *Black* or his attempt to interpolate some of its language to serve his purposes. We are

(continued)

only an incidental effect on petitioner's religious beliefs which must yield to the broader public interest. *Bethel Baptist Church* v. *United States*, 822 F.2d 1334, 1339 (3d Cir. 1987); *Johnson* v. *United States*, 422 F. Supp. at 975.

Our decision does not compel petitioner to choose between his marital status and his religion. *See Bowen* v. *Roy*, 476 U.S. 693, 703 (1986). Nor does it place a financial burden on petitioner that is so grievous as to render the statue's classification system an unconstitutional burden on petitioner's free exercise rights. *See United States* v. *Lee*, 455 U.S. 252, 262 (1982); *Kessler* v. *Commissioner*, 87 T.C. 1285, 1292 (1986), *affd.* without published opinion 838 F.2d 1215 (6th Cir. 1988); *cf. United States* v. *Washington*, 672 F. Supp. 167, 170 (M.D. Pa. 1987). Petitioner is free to practice his religion; he just will not be subsidized. *Cammarano* v. *United States*, 358 U.S. 498, 513 (1959); *Kessler* v. *Commissioner*, 87 T.C. at 1292.

The fact that only a small number of persons may be in a position comparable to that of petitioner — a fact asserted by petitioner on brief but one as to which the record is devoid of any probative evidence — is, in any event, irrelevant. The resolution of a conflict between the application of the tax laws and the free exercise of religion should not depend upon the numbers involved. Cf. *Frazee* v. *Illinois Department of Employment Security*, ___ U.S. ___ (March 29, 1989). Given the fact that "'we are a cosmopolitan nation made up of people of almost every conceivable religious preference,' there is a point at which accommodation would 'radically restrict the operating latitude of the legislature.'" *United States* v. *Lee*, 455 U.S. at 259 (citing *Braunfeld* v. *Brown*, 366 U.S. 599, 606 (1961)). We think the accommodation of petitioner

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(continued)

constrained to note that we are puzzled by petitioner's criticism of *Black* on the ground that we did not consider the issue of standing. We think that the standing of petitioners in that case was clear. Unlike the war-expenditure cases, *see Scheide* v. *Commissioner*, 65 T.C. 455 (1975), the Blacks were faced with a statute which applied directly to them, just as is petitioner herein. *See Allen* v. *Wright*, 468 U.S. 737, 750–756 (1984). If the Blacks had no standing, it is hard to see how petitioner could claim to be in a better position.

would be beyond that point. Such an accommodation would create an administrative and judicial quagmire by requiring the determination of the religious beliefs of taxpayers in order to determine the applicable tax status. This is a burden which we do not believe should be imposed on the government in administering a statute which is neutral on its face as to persons to which it applies. *Bowen* v. *Roy*, 476 U.S. at 701–709.

We do not view the cases requiring that persons not be denied the benefits of direct governmental payments because of their religious beliefs as dictating a different conclusion. *Hobbie* v. *Unemployment Compensation Appeals Commission of Florida*, 480 U.S. 136 (1987); *Thomas* v. *Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707 (1981); *Sherbert* v. *Verner*, 374 U.S. 398 (1963). These cases involved a complete denial of benefits whereas here petitioner will only have to pay a somewhat higher amount of tax than would otherwise be required. Moreover, these cases involved statutes which contained a "good cause" exception, and the Supreme Court found that failure to apply this exception, because of a person's religious beliefs, constituted unequal treatment and, therefore, unconstitutional discrimination against that person because of those beliefs. *Freeze* v. *Illinois Department of Employment Services, supra. See also Bowen* v. *Roy, supra.*

The long and the short of the matter is that the fact that petitioner may have to pay somewhat more tax as a married individual filing separately than he would if he were taxed at the rates applicable to unmarried individuals is not enough to justify a decision in his favor. That a law with a secular purpose may have the effect of making adherence to his religious beliefs more expensive does not render the statute unconstitutional under the free exercise clause of the First Amendment. *Braunfeld* v. *Brown*, 366 U.S. at 605–607. 7/

To reflect the agreement of the parties on other issues,

Decision will be entered under Rule 155.

7/ One cannot help but wonder whether, in another year when the rates applicable to unmarried individuals turned out to be more expensive, petitioner would seek to abandon his present contentions and claim the status which respondent contends should apply to him herein.

UNITED STATES TAX COURT

LLOYD W. PATTERSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 8798–86
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

DECISION

Pursuant to the opinion of the Court filed April 27, 1989 and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from the petitioner for the taxable year 1982 in the amount of $7,198.00 and, after taking into consideration a prepayment credit of $5,765.00 and a payment of $1,000.00 made on May 31, 1988, there is a balance due of $433.00;

That there is an addition to the tax due from the petitioner for the taxable year 1982 under the provisions of I.R.C. § 6653(a)(1) in the amount of $360.00;

That there is an addition to the tax due from the petitioner for the taxable year 1982 under the provisions of I.R.C. § 6653(a)(2) in the amount of 50% of the interest due on $1,433.00;

That there is an addition to the tax due from the petitioner for the taxable year 1982 under the provisions of I.R.C. § 6651 in the amount of $358.00; and

That there is no addition to the tax due from the petitioner for the taxable year 1982 under the provisions of I.R.C. § 6654.

(Signed) THEODORE TANNENWALD JR.

Judge

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the respondent's computation, and that the Court may enter this decision, without prejudice to the right of either party to contest the correctness of the decision entered herein.

PETER K. SCOTT
Acting Chief Counsel
Internal Revenue Service

s/_____
JAMES B. LEWIS
Counsel for Petitioner
Benjamin N. Cardozo School
of Law
55 Fifth Avenue
New York, New York 10003
(212) 790-0381
LJ 0372

By: s/_____
DONALD SCHWARTZ
Assistant District Counsel
Brooklyn
1600 Stewart Avenue
Suite 601
Westbury, New York 11590
(516) 832-2404
SD 0121

July 19 1989

U.S. Tax Court
8798–86

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 24th day of January , one thousand nine hundred and ninety.

PRESENT:

HON. ELLSWORTH VAN GRAAFEILAND,
HON. ROGER J. MINER,
HON. JOHN M. WALKER, JR., Circuit Judges

LLOYD W. PATTERSON,

Petitioner–Appellant,

–against–

ORDER
89–4117

COMMISSIONER OF INTERNAL REVENUE,

Respondent–Appellee.

UPON CONSIDERATION of this appeal from a decision of the United States Tax Court (Tannenwald, Jr.), it is hereby

ORDERED, ADJUDGED AND DECREED that the decision of said court be and it hereby is affirmed.

Lloyd W. Patterson appeals from a decision of the United States Tax Court holding that the Commissioner of Internal Revenue properly assessed a deficiency in his 1982 taxes as well as penalties for negligence, underpayment and failure to file. The only issue on appeal is whether the Tax Court properly determined that calculation of Patterson's tax liability at the rate applicable to a married individual filing separately does not violate his right to free exercise of his religion.

Patterson married Irmin Roach in the Anglican Church of Guiana in British Guiana. As of tax year 1982, Patterson and Roach were living apart, but they had not been legally divorced or separated. When Patterson failed to file his 1982 tax return, the Commissioner computed his tax liability as a married individual filing separately and served Patterson with a notice of deficiency. Patterson challenged the deficiency in a petition to the Tax Court, asserting that his religious beliefs prohibited him from legally divorcing or separating from his wife. He contends that the requirement that he file as a married person filing separately unconstitutionally infringed on the free exercise of his religion.

Issued as mandate:

The free exercise clause does not exempt an individual from incidental burdens on the exercise of religion resulting from a neutral, secular law. *United States* v. *Lee*, 455 U.S. 252, 257-58 (1982). The tax laws at issue here do not require Patterson to act or refrain from acting in a manner contrary to his religious beliefs. Any burden imposed is insignificant and incidental to the legitimate, neutral and secular interest in maintaining a sound tax system. *Jimmy Swaggart Ministries* v. *Board of Equalization of California*, No. 88–1374 (U.S. Jan. 17, 1990) (1990 WL 1971, 1990 U.S. LEXIS 485); *Hernandez* v. *Commissioner*, 109 S. Ct. 2136, 2149 (1989).

s/_____
ELLSWORTH VAN GRAAFEILAND,

s /_____
ROGER J. MINER,

s/_____
JOHN M. WALKER, JR.,

Circuit Judges.

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.

Internal Revenue Code of 1954 (26 U.S.C.):

SECTION 1. TAX IMPOSED.

(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS). — There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 143) a tax determined in accordance with the following tables:

(1) FOR TAXABLE YEARS BEGINNING IN 1982. —

If taxable income is:	The tax is:
Not over $2,300	No tax.
Over $2,300 but not over $3,400	12% of the excess over $2,300
Over $3,400 but not over $4,400	$132, plus 14% of the excess over $3,400.
Over $4,400 but not over $6,500	$272, plus 16% of the excess over $4,400.
Over $6,500 but not over $8,500	$608, plus 17% of the excess over $6,500.
Over $8,500 but not over $10,800	$948, plus 19% of the excess over $8,500.
Over $10,800 but not over $12,900	$1,385, plus 22% of the excess over $10,800.
Over $12,900 but not over $15,000	$1,847, plus 23% of the excess over $12,900.
Over $15,000 but not over $18,200	$2,330, plus 27% of the excess over $15,000.
Over $18,200 but not over $23,500	$3,194, plus 31% of the excess over $18,200.
Over $23,500 but not over $28,800	$4,837, plus 35% of the excess over $23,500.

Over $28,800 but not over $34,100	$6,692, plus 40% of the excess over $28,800.
Over $34,100 but not over $41,500	$8,812, plus 44% of the excess over $34,100.
Over $41,500	$12,068, plus 50% of the excess over $41,500.

(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS. — There is hereby imposed on the taxable income of every married individual (as defined in section 143) who does not make a single return jointly with his spouse under section 6013 a tax determined in accordance with the following tables:

(1) FOR TAXABLE YEARS BEGINNING IN 1982. —

If taxable income is:	The tax is:
Not over $1,700	No tax.
Over $1,700 but not over $2,750	12% of the excess over $1,700.
Over $2,750 but not over $3,800	$126, plus 14% of the excess over $2,750.
Over $3,800 but not over $5,950	$273, plus 16% of the excess over $3,800.
Over $5,950 but not over $8,000	$617, plus 19% of the excess over $5,950.
Over $8,000 but not over $10,100	$1,006, plus 22% of the excess over $8,000.
Over $10,100 but not over $12,300	$1,468, plus 25% of the excess over $10,100.
Over $12,300 but not over $14,950	$2,018, plus 29% of the excess over $12,300.
Over $14,950 but not over $17,600	$2,787, plus 33% of the excess over $14,950.

Over $17,600 but not over $22,900	$3,661, plus 39% of the excess over $17,600.
Over $22,900 but not over $30,000	$5,728, plus 44% of the excess over $22,900.
Over $30,000 but not over $42,800	$8,852, plus 49% of the excess over $30,000.
Over $42,800	$15,124, plus 50% of the excess over $42,800.

SEC. 143. DETERMINATION OF MARITAL STATUS.

(a) GENERAL RULE — For purposes of part V —

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(b) CERTAIN MARRIED INDIVIDUALS LIVING APART. — For purposes of part V, if —

(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a dependent (A) who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the individual, and (B) with respect to whom such individual is entitled to a deduction for the taxable year under section 151,

(2) such individual furnishes over half of the cost of maintaining such household during the taxable year, and

(3) during the entire taxable year such individual's spouse is not a member of such household, such individual shall not be considered as married.